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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/583,310 05/30/00 CASHMAN

J 16663-000120

020350 HM12/0928
TOWNSEND AND TOWNSEND AND CREW
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

EXAMINER

TLING, P

ART UNIT

PAPER NUMBER

1652

DATE MAILED:

09/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/583,310	Applicant(s) Cashman et al.						
	Examiner Peter Tung	Art Unit 1652						
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --								
<p>Period for Reply</p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 								
<p>Status</p> <p>1) <input type="checkbox"/> Responsive to communication(s) filed on _____</p> <p>2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213..</p>								
<p>Disposition of Claims</p> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>3-5 and 37-39</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claims <u>3-5 and 37-39</u> are subject to restriction and/or election requirement.</p>								
<p>Application Papers</p> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>								
<p>Priority under 35 U.S.C. § 119</p> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). 								
<p>*See the attached detailed Office action for a list of the certified copies not received.</p>								
<p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>								
<p>Attachment(s)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding-right: 20px;">15) <input type="checkbox"/> Notice of References Cited (PTO-892)</td> <td style="width: 50%;">18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</td> </tr> <tr> <td>16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</td> <td>19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</td> </tr> <tr> <td>17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</td> <td>20) <input type="checkbox"/> Other: _____</td> </tr> </table>			15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____
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17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____							

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 3-5 and 37, drawn to the DNA sequence of SEQ ID NO: 5, the DNA sequence encoding SEQ ID NO: 6 and a host cell comprising said DNA sequence, classified in class 435, subclass 189.
 - II. Claims 38 and 39, drawn to the DNA sequence of SEQ ID NO: 7 and the DNA sequence encoding SEQ ID NO: 8, classified in class 435, subclass 189.
2. The inventions are distinct, each from the other because of the following reasons:
Each of Groups I and II is directed to a separate and distinct invention. Group I is directed to the DNA sequence of SEQ ID NO: 5 and a host cell comprising said DNA sequence and Group II is directed toward the DNA sequence of SEQ ID NO: 7 and the DNA sequence encoding SEQ ID NO: 8.
3. The products of Group I and II would be expected to have distinct morphological, functional, chemical and physical properties as indicated by their divergent classification, process of making and process of using. These products are capable of separate manufacture, use, or sale as claimed, and are patentably distinct.

Because these inventions are distinct for the reasons given above and the search required

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for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Tung, Ph.D. whose telephone number is (703) 308-9436. The examiner can normally be reached on Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy, Ph.D., can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


PONNATHAPU ACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600